IN THE

Supreme Court of the United States

October Term, 1978

No. 78-674

JUDGE JAMES J. MAYER,
Petitioner,

vs.

THE OHIO STATE BAR ASSOCIATION,
Respondent.

BRIEF IN OPPOSITION

JOHN R. WELCH, ESQ.
33 West Eleventh Avenue
Columbus, Ohio 43201

ALBERT L. BELL, ESQ.
33 West Eleventh Avenue
Columbus, Ohio 43201

HARLAN S. HERTZ, ESQ.
1020 Leader Building
Cleveland, Ohio 44114

EUGENE BALK, ESQ.
First Federal Building
Southwyck Blvd.
Toledo, Ohio 43614

Counsel for Respondent

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MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus, Ohio 43216

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CITATIONS

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BRIEF IN OPPOSITION

The respondent, Ohio State Bar Association, respectfully requests that this Court deny the petition for a writ of certorari, seeking review of the judgment and order of the Supreme Court of Ohio. That judgment and order is reported in 54 Ohio St. 2d 431.

STATEMENT OF THE CASE

This case concerns the judgment of the Supreme Court of Ohio which affirmed an Order of a Commission of Five Judges (hereinafter the Commission) that petitioner be "retired for disability as a Judge of the Court of Common Pleas, Richland County, Ohio, with the right to any emoluments, benefits and compensation allowed by law".

The procedure and the grounds for the retirement of a judge are governed by statute,[1] as authorized by the Constitution of Ohio,[2] and implemented by Rules of the Supreme Court of Ohio.

Respondent (Relator in court below) commenced these proceedings on September 16, 1976, by filing a Sworn Complaint and Certificate with the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court (hereinafter the Board) alleging that cause exists for the removal, retirement, or suspension of petitioner from office. A copy of that Com-

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[1] 2701.11, Revised Code of Ohio

Rules for retirement, removal and suspension of judges; appointment of commission.

Subject to rules implementing sections 2701.11 and 2701.12 of the Revised Code, that shall be promulgated by the Supreme court, upon written and sworn complaint setting forth the cause or causes and after reasonable notice thereof and an opportunity to be heard, any judge may be retired for disability, removed for cause, or suspended without pay for cause by a commission composed of five judges of this state, all of whom shall be appointed by the supreme court from among judges of the courts of record located within the territorial jurisdiction in each of any five of the appellate districts, not including that within which the respondent judge resides.

Such a commission shall be appointed by the supreme court upon receipt of a report of the board of commissioners on grievances and discipline that such board has received a written and sworn complaint alleging that cause exists for retirement, removal, or suspension of a judge under section 2701.12 of the Revised Code, and that upon investigation and a finding by at least two-thirds of the members of such board that there is substantial credible evidence in support of such complaint. Any judge so retired, removed, or suspended may appeal, on the record made before the commission, from the commission's action to the supreme court. The commission, the court, or a judge thereof may stay execution of an order pending disposition of an appeal. The

plaint was served on Petitioner. The full text of the Complaint is attached as Appendix A. Paragraphs 1, 2, 14 and 15 of that Complaint read as follows:

> 1. Relator alleges that cause exists to remove Respondent from the office of Judge of the Court of Common Pleas of Richland County, Ohio for the reason that Respondent engaged in the conduct hereinafter described prejudicial to the administration of justice and for the reasons that Respondent engaged in the conduct hereinafter described which would bring the judicial office which he holds into disrepute.

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court may affirm, reverse, or modify the order of the commission.

2701.12, Revised Code of Ohio

Retirement, removal or suspension of judges.

(A) Cause for removal or suspension of a judge from office without pay under section 2701.11 of the Revised Code exists when he has, since first elected or appointed to judicial office:

(1) Engaged in any misconduct involving moral turpitude, or a violation of such of the canons of judicial ethics adopted by the supreme court as would result in a substantial loss of public respect for the office;

***

(B) Grounds for retirement of a judge from office for disability exist when he has a permanent physical or mental disability which prevents the proper discharge of the duties of his office.

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[2] Article II, Section 38 Constitution of Ohio

Removal of officials.

Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law; and this method of removal shall be in addition to impeachment or other method of removal authorized by the constitution.

2. Relator alleges that cause exists to remove Respondent from office of Judge of the Court of Common Pleas of Richland County, Ohio for the reason that Respondent is suffering from a physical disability and from a mental disability and while so suffering Respondent has engaged in the conduct described below.

14. Relator says that Respondent is suffering either permanently or for an indefinite time from physical and mental disabilities which substantially impair his capacity to use self-control, judgment and discretion in the conduct of his affairs and social relations; and which will prevent, and does now prevent, Respondent from the proper discharge of the duties of his office.

15. Relator says that the Respondent has violated Canon 1, Canon 2 A, and Canon 7 A(4) of the Code of Judicial Conduct, and Canons 4, 28 and 34 of the Canons of Judicial Ethics, and Respondent has engaged in conduct (1) prejudicial to the administration of justice in that he has created a situation in Richland County which precludes him from trying criminal cases; and (2) Respondent has engaged in conduct which brings the judicial office into disrepute in that he has publicly and privately attacked the character, motives and activities of judges, court personnel, the County Prosecutor and officers and officials of the Democratic Party of Richland County.

Under Ohio procedure, the function of the Board is to investigate the allegations of the Complaint, and if two-thirds of the members of such Board find substantial credible evidence in support of such complaint, certify their findings to the Supreme Court.[3]

After investigation, the Board submitted the following report to the Supreme Court of Ohio.

[3] Section 2701.11, Revised Code.

"The Board of Commissioners on Grievances and Discipline, in compliance with the provisions of Rule VI of the Supreme Court Rules for the Government of the Bar of Ohio, did, on October 28 and 29, 1976, conduct an investigation into the complaint filed by Relator, Ohio State Bar Association, against the Respondent, Judge James J. Mayer, Richland County Common Pleas Court, alleging that cause exists for the retirement, removal or suspension from office of Judge Mayer as provided in Gov. R. VI; and R. C. 2701.12. The Board of Commissioners did by affirmative vote of 13 members being more than two-thirds of the members of said Board, find that there is substantial credible evidence in support of the misconduct allegations as set forth in paragraph one of the complaint and do hereby report to the Supreme Court."

Thereafter the Supreme Court, pursuant to Gov. R. VI and Section 2701.11, Revised Code of Ohio appointed a five-judge commission to determine the question of retirement, removal or suspension of Petitioner. The Chairman of the Commission set a date for a hearing and notified both parties.

The Commission conducted hearings on the Complaint on March 15, 16 and April 12, 13, 14, 1977, and ordered that petitioner "be retired for disability as a Judge of the Court of Common Pleas of Richland County, Ohio with the right to any emoluments, benefits and compensation allowed by law".

The evidence on which the order was based was summarized by the Commission as follows: (Petitioner's Brief p. 17A, 18A)

"The evidence established, and the respondent (petitioner) in his brief candidly admits, that beginning in 1961 respondent experienced numerous

health problems. In 1961 respondent contracted viral encephalitis, African sleeping sickness. Prior to 1973 he experienced increasing problems of sleeplessness and depresson. He used alcoholic beverages to excess and in October of 1973 engaged in a public brawl with the manager of a Lima restaurant. Thereafter he was admitted to the University Hospital in Columbus where he was diagnosed as being manic depressive.

"Lithium carbonate was prescribed for respondent. The proper dosage was determined to be one which would maintain a blood level of Lithium at .7%. Respondent was released from University Hospital on November 15, 1973. In October 1974 respondent was advised that he had massive cancer of the large intestine. Thereafter all except the last foot of that organ was removed.

"Carcinoma of the liver was also found. Respondent was released in November 1974. Thereafter, he suffered rectal and urinary incontinence, diarrhea and severe vomiting. As a result of these afflictions, respondent could not or did not maintain the required .7% Lithium level.

"On May 11, 1975, respondent entered the Cleveland Clinic to undergo surgery for the removal of a portion of his liver affected by cancer. Following his release he took a variety of medication. This produced several side effects, including incontinence. Respondent's Lithium level, because of this and also a failure to take the proper dosage was not maintained at the proper level. Respondent again returned to the Cleveland Clinic for treatment relative to his Lithium level, diarrhea, vomiting, asthmatic and prostrate problems.

"The medical evidence is undisputed that surgery has probably arrested the carcinoma of the intestine and that the respondent has lived beyond the life expectancy of persons who have had surgery involving carcinoma of the liver. Further the

respondent offered probative evidence that his manic depressive mental condition is controlled through the maintenance of a .7% level of Lithium Carbonate in his blood.

"When respondent's Lithium level is not maintained, his history, as adduced by the evidence, establishes by clear and convincing evidence that he enters into the manic or hypo manic phase of manic depression, suffers from delusions, and has paranoid symptoms. Respondent contends that since January 1976 he is properly, adequately and fully controlled and no concern should be felt for his proper handling of his judicial duties.

"A majority of the Commission regretfully does not agree.

"Evidence was submitted supporting by clear and convincing evidence the allegations contained in the complaint.[1]

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[1] "Inter alia the respondent in letters, in a brief which he prepared, duplicated and disseminated 25 copies, in conversations and at public meetings referred to a fellow judge as liar, a cruel saddist, as the Godfather, as part of the Gilligan Mafia, a.k.a. the Dirty Dozen, that the Prosecuting Attorney of the county belonged to the Mafia and was incompetent. Respondent accused a fellow judge and a Democratic official of improper handling of fiscal matters and tried to institute a grand jury investigation of Richland County Democratic officials. Forty-five affidavits of prejudice in criminal matters were filed and granted against Respondent. He does not now hear criminal cases when there is a jury except in an emergency.

"Although respondent's actions have not resulted in criminal action, lewd or lascivious behavior or in the illegal or improper loss of liberty or property of those who appeared before him, his use or attempted improper use of the grand jury can be compared to the actions of *Franko* in *Mahoning County Bar Association v. Franko* (1958) 166 Ohio St. 17."

> "We find therefore that respondent during the period outlined above engaged in acts which violated Canon 1, Canon 2 A of the Code of Judicial Conduct and Canon 4 and 34 of the Canons of Judicial Ethics.[5] He has engaged in such acts as resulted in a substantial loss of public respect for his judicial office, brought his judicial office into disrepute and has engaged in conduct prejudicial to the administration of justice."

Petitioner appealed the order of the Commission to the Supreme Court of Ohio contending (1) that the Commission erred in that the evidence does not support the findings and order of the Commission, (2) that petitioner's actions upon which the Findings and Order of the Commission are premised all relate to statements of petitioner which are protected by the First Amendment to the United States Constitution and the Ohio Constitution, and (3) that the statutes, rules and canons under which these proceedings were conducted are unconstitutionally vague and overbroad in violation of petitioner's due process rights.

Finding Petitioner's contentions to be without merit the Supreme Court of Ohio unanimously affirmed the findings and order of the Commission.

REASONS WHY THE WRIT SHOULD BE DENIED

Neither the decision below nor the record raise the Questions Presented.

The first three Questions Presented in the petition (p. 2), (which are restatements of the same question in different form) contend that the evidence in this

[5] For the text of these Canons see Brief of Petitioner p. 29 A — 30 A.

case does not support the factual findings of the court below. None of those questions were properly raised or decided by the court below. Therefore, this Court lacks jurisdiction to review those questions. Rule 23 (1) (f) of this Court.

FIRST QUESTION PRESENTED

With respect to the first question presented, all that was claimed in the court below was that the evidence did not support the finding and order of the Commission of Judges that petitioner be retired for disability. No federal claim was asserted, and, of course, none decided. Having lost on that issue in the court below, petitioner seeks review here, claiming "plain error", by the court below, relying on the decision in *Thompson v. City of Louisville*, 362 U.S. 199. That case is clearly distinguishable from this one both on its facts and on the ground that the federal claim in *Thompson* was preserved below. In *Thompson* the question was whether his conviction for loitering and disorderly conduct "was so devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment", and it was held that the decision on this question "turns not on the sufficiency of the evidence, but whether this conviction rests upon any evidence at all".

Clearly, the *Thompson* holding is not applicable here. First, the due process question was not raised and preserved in this case, as it was in *Thompson*. Second, the decision of the court below makes it plain that there is ample evidence to support the findings of fact. For example, it is undisputed that the petitioner has a manic depressive illness. It is also undisputed that petitioner's manic depressive illness is treated with

lithium carbonate, a specific treatment to control the manic phase of his illness. However, it is plain from the evidence and the findings below that the lithium treatment does not always work. That fact is relevant to petitioner's contention in the court below that he does not *now* suffer from disabilities.

Two psychiatrists testified in this case. Strangely, their names are Dr. Brown and Dr. Jones. With respect to the question of whether petitioner now suffers from such disabilities as to warrant the retirement order by the court below, the medical evidence is undisputed that petitioner has a permanent manic depressive psychosis; both psychiatrists so testified, and further that there is no known cure for the illness.[6] Petitioner's attending psychiatrist, Dr. Jones, testified that petitioner was first hospitalized in October 1973 after engaging in a public brawl in a restaurant. According to Dr. Jones, petitioner was admitted to the hospital following four days of hyperactivity, excessive irritability, heavy drinking, belligerent behavior, flight of ideas, grandiosity, some suspicious ideas, which included dealing with the CIA, that he was a five star general, president of the United States and that the Mafia was after him.[7] The diagnosis of mania was made at that time and Lithium Carbonate, a treatment for mania, was prescribed.[8] Lithium Carbonate, a chemical compound, is a specific treatment for mania. It is not a cure for the illness; the illness continues to operate behind the scenes.[9] The Lithium seems to operate to suppress mania when it is present subclinically.

[6] Tr. 3-16, p. 61; 4-13 pp. 195-196.
[7] Tr. 4-13 pp. 164, 165.
[8] Tr. 4-13 p. 166.
[9] Tr. 4-13 p. 166.

The Lithium level in the blood is very relevant to the control of mania.[10] In petitioner's case, the level was determined to be at least .7%. If petitioner's level drops below that figure and the mania phase of his illness is active subclinically, and is being suppressed by the Lithium, then Dr. Jones testified he would expect petitioner to become ill again.[11] Dr. Jones testified that he saw petitioner on July 7, 1975, as an outpatient (following petitioner's last surgery in May 1975) and felt he was doing well.[12] He next saw petitioner on October 22, 1975, and he had changed from the way he was July 7. When he saw him on October 22, 1975, he was again irritable, easily aggravated, inclined to be authoritarian, had a lot of excess psychomoter activity, and his thoughts were grandiose. He was preoccupied with thoughts about conspiracy to persecute him. Petitioner had been taking Lithium medication three times a day but it hadn't benefited the same way it had before.[13] Dr. Jones testified that when he saw petitioner on October 22, 1975, his Lithium level was 0.8%, which he thought was satisfactory, but that the Lithium level has to be at a therapeutic level for approximately a week to have a good effect.[14] Dr. Jones was unable to explain the change in petitioner's demeanor; he said that petitioner's surgeries may have been the cause since petitioner was without Lithium for about eight days in May 1975. But in August and September he was taking Lithium as prescribed, and suffered exacerbations of his illness

[10] Tr. 4-13 p. 167.
[11] Tr. 4-13 p. 169.
[12] Tr. 4-13 p. 136.
[13] Tr. 4-13 p. 137.
[14] Tr. 4-13 p. 139.

anyway, which was apparently caused by having a low serum Lithium level, but he did not know for sure. He thought three things may have been involved. One was that petitioner was having an adverse reaction to chemotherapy, and another was he was taking a diuretic for hypertension, and the third was that petitioner likely suffered an exacerbation of his illness at that time, and the latter would have nothing to do with other medications petitioner was talking at that time.[15] Furthermore, there is medical evidence that during the course of petitioner's illness he has displayed paranoid symptoms, and suffers from delusions. Dr. Brown so testified.[16] Dr. Jones so testified.[17]

In sum, the above medical evidence, and much more medical evidence, and the conduct of petitioner when not under control, support the finding below (Pet. p. 4A, 5A)

> "When respondent's (petitioner's) Lithium level is not maintained, his history, as adduced by the evidence, establishes by clear and convincing evidence that he enters into the manic or hypo manic (not yet manic, but heading towards it) phase of manic depression, suffers from delusions, and has paranoid symptoms."

Therefore, without regard to the jurisdictional question, the decision of the court below is clearly correct.

SECOND QUESTION PRESENTED

In his second question petitioner contends he was deprived of due process of law through the applica-

[15] Tr. 4-13 p. 199, 200.
[16] Tr. 3-16 p. 53, 62, 69.
[17] Tr. 4-13 p. 188, 189.

tion of an unforeseeable standard of law not contemplated under the requirements of the statute providing grounds for retirement from office.

This question was first raised in petitioner's motion for rehearing in the court below. The motion for rehearing was denied, without opinion. Under such circumstances that question is ordinarily not reviewable here.

> "Questions first presented to the highest state court on a petition for rehearing came too late for consideration here, unless the State court exerted its jurisdiction in such a way that the case could have been brought here had the question been raised prior to the original disposition." (Citation omitted) *Radio Station WOW, Inc., Johnson*, 326 U.S. 120, 128.

Nonetheless, petitioner contends that the application of a "latent possibility" standard by the court below in determining his disability was an "unforeseeable and retroactive judicial expansion of the clear, narrow, and precise terms of Section 2701.12 (B), Revised Code of Ohio, in violation of Petitioner's right to fair notice of the charges under the Fourteenth Amendment of the United States Constitution." (Pet. p. 18, 19)

Parenthetically, it may be noted that while petitioner claims here that the terms of Section 2701.12 (B), Revised Code of Ohio, are "clear, narrow and precise", in the court below he claimed that the same statute, rules and canons under which these proceedings were conducted are "unconstitutionally vague and overbroad" in violation of his due process rights. (The decision below Pet. p. 10 A) But petitioner's claim ignores the actual holding of the court below, which in its full context was:

> "The record amply demonstrates that when appellant's (petitioner's) lithium level is not properly maintained he has engaged in conduct violative of the foregoing canons (of judicial ethics). Given appellant's present physical condition, there is ever-present the latent possibility of recurrence of the conditions which precipitate erratic and non-judicious conduct. Bearing in mind that Gov. R. VI, as stated in Section 13, is to be '*** liberally construed for the protection of the public and the Courts ***,' this court concludes that the commission did not err in finding that appellant (petitioner) "*** has a physical and mental disability which prevents the proper discharge of the duties of his office."

"Latent" means that the condition in question is present and capable of becoming though not now visible or active.[18] Thus, the court below is saying that petitioner's conceded physical condition, including his manic depressive illness, coupled with the evidence as to unfortunate conduct by petitioner creates a sufficient possibility of recurrence that it is unwise for him to remain on the bench. That, of course, is not the same as saying that petitioner has the possibility of having an illness. He has a whole flock of illnesses. Therefore, there is nothing "unexpected" in the decision below. On the contrary, it is a clear affirmation of the Findings and Order of the Commission of Judges that petitioner has a physical and mental disability which prevents the proper discharge of the duties of his office. And under the provisions of Section 2701.12 (B) Revised Code of Ohio either of those findings are grounds for retirement.

This court has neither jurisdiction nor concern over the question whether the court below properly applied

[18] Webster's Third New International Dictionary, p. 1275.

Section 2701.12 (B), Revised Code of Ohio, to the facts of this case so long as there is some evidence to support the factual findings and judgment. As noted above there is ample evidence to support the findings and order in this case.

THIRD QUESTION PRESENTED

In his third question petitioner contends that he was deprived of due process of law "when he was tried 'convicted' and order retired from office even though the allegations constituting grounds for retirement from office had been eliminated prior to the hearing by a body acting in the capacity similar to a grand jury". This question was neither raised, nor preserved in the court below. Therefore, this Court is without jurisdiction to review it. Rule 23 (1)(f). Furthermore, the contention that petitioner did not receive adequate notice of the charge, and an opportunity to defend, is wholly without foundation. At the outset of the hearing before the Commission of Judges, petitioner moved to limit evidence to the charges in paragraph one of Respondent's Complaint relating to his conduct (App. B. p. 1) contending that the Board of Commissioners on Grievances and Discipline had eliminated paragraph two relative to his health. The Commission unanimously overruled that motion. The Commission held that under the Ohio statutes and Rule VI of the Supreme Court Rules for the Government of the Bar of Ohio, the Board of Commissioners on Grievances and Discipline did not and did not have authority to eliminate the allegation in Respondent's Complaint concerning the issue of petitioner's health. (Findings and Order of the Commission Pet. p. 20 A, 21 A) And, it bears repeating, that petitioner was informed of the Commission's ruling at the outset of the

hearing. Thereafter, evidence relevant to petitioner's health was submitted by both parties. It is frivolousness to claim that petitioner did not have notice of the charge and an opportunity to defend.

FOURTH QUESTION PRESENTED

Finally, petitioner contends that he was involuntarily retired from office for making public statements about public officials, off the bench, in derogation of his rights to exercise First Amendment guarantees.

The claim is without merit. Petitioner was not ordered retired because of his public attacks on the character of judges and other public officials. He was ordered retired for physical and mental disability.[19] Thus, the judgment below rests on non-federal grounds without regard to the federal question sought to be raised here.

Petitioner argues in support of this proposition "that it must be concluded that the Supreme Court of Ohio took the action it did as a means to punish Petitioner for certain statements he made which are protected by the First Amendment of the United States Constitution." That statement is not only unwarranted, but also unworthy of petitioner. There is nothing in the record of this case that would even suggest that the Supreme Court of Ohio sought to punish petitioner because of his public statements.

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[19] Opinion of the court below. Pet. p. 7 A, 8 A.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for writ of certorari should be denied.

Respectfully submitted,

JOHN R. WELCH, ESQ.
33 West Eleventh Avenue
Columbus, Ohio 43201

ALBERT L. BELL, ESQ.
33 West Eleventh Avenue
Columbus, Ohio 43201

HARLAN S. HERTZ, ESQ.
1020 Leader Building
Cleveland, Ohio 44114

EUGENE BALK, ESQ.
First Federal Building
Southwyck Blvd.
Toledo, Ohio 43614

Counsel for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of the foregoing has been mailed by first class mail with postage prepaid to Counsel for Petitioner, Russell P. Herrold, Jr., 52 East Gay Street, P. O. Box 1008, Columbus, Ohio 43216.

Respectfully submitted,
JOHN R. WELCH

APPENDIX A

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

Filed September 16, 1976

In re:
Complaint against

HON. JAMES J. MAYER,
Judge, Court of Common Pleas,
Richland County,
Mansfield, Ohio 44092,
Respondent,

vs.

OHIO STATE BAR ASSOCIATION,
33 West 11th Avenue,
Columbus, Ohio 43201,
Relator.

No. R-76-1

SWORN COMPLAINT AND CERTIFICATE

(Rule VI of the Supreme Court Rules for the Government of the Bar of Ohio)

1. Relator alleges that cause exists to remove Respondent from the office of Judge of the Court of Common Pleas of Richland County, Ohio for the reason that Respondent engaged in the conduct hereinafter described prejudicial to the administration of justice and for the reason that Respondent engaged in the conduct hereinafter described which would bring the judicial office which he holds into disrepute.

2. Relator alleges that cause exists to remove Respondent from the office of Judge of the Court of Common Pleas of Richland County, Ohio for the reason that Respondent is suffering from a physical disability and from a mental disability and while so suffering Respondent has engaged in the conduct described below.

3. Respondent has been in ill health since 1961, when he became ill due to viral encephalitis. He has never fully recovered from that illness. In 1962, Respondent suffered depression and was hospitalized. In 1966, Respondent again suffered depression due to encephalitis and was admitted to Upham Hall of Ohio State University Hospital. He was released in 1966, although still ill. In 1967, Respondent developed insomnia and was admitted to Mansfield General Hospital and then again to Ohio State University Hospital.

4. In 1968, Respondent again assumed the bench and from 1968 to 1972, he developed an addiction to the use of prescription drugs. From 1968 to October 1974, for various periods of time, Respondent was admitted to St. Rita's Hospital, Lima, Ohio, and to Ohio State University Hospital.

5. In October and November 1974, Respondent was admitted from time to time to Cleveland Clinic where he was also an outpatient. Respondent was twice operated for malignancy in Cleveland Clinic in 1974, and thereafter, commenced a course of chemotherapy which was completed in December 1975.

6. In about August 1973, and continuing thereafter, Respondent wrote numerous letters and other documents and made public statements printed in the newspapers in which he alleged various conspiracies among the judges, court personnel, public officials, officers of the Democratic Party and others in Richland County, and officers and officials of the State of Ohio,

to harm the Respondent so as to cause him to be removed from office or to discredit his reputation. By his written and oral statements, Respondent has made himself a public issue.

7. On August 22, 1973, Respondent wrote to Judge Richard M. Christiansen, Court of Common Pleas, Probate Division, Richland County, requesting Judge Christiansen to take over as Common Pleas Judge supervising a Grand Jury investigation of the Democratic Party of Richland County, and to try all criminal cases arising from the investigation. Respondent alleged, in part, that

> "The pattern of misuse of a public trust and the Democratic Party for private advantage and gain for a period of time that extends back to the early '60's through May of '73 is so unbelievably gross, wicked and dishonest that if exposed fully will, in my opinion, make Watergate, Crofters and the Perfuma incident in England tea parties by comparison."

8. On October 4, 1973, Respondent again wrote to Judge Christiansen in part as follows:

> "This will advise that as a friend I would like to request that you select the best foreign lawyer you can find, as 80% of our Bar hates your guts and I would not trust anyone who you are not positive is very close to you to give you any advice. I will be in touch with you Tuesday in person or by letter with full details of your problem.
>
> "As a clue, the people in Shelby think you are using your office, particularly the lunacy section of your court, to falsely accuse me of being a lunatic and/or driving me to it as they are fully familiar with the fact that you were the architect of the fiasco that was to be an orderly John Glenn party. They are so angry that it is entirely possible that someone will do you personal violence.

> "The lawyers on the other hand feel you are practicing law while you are a judge as well as using your office because you are jealous of my success and want to harm me and because Governor Gilligan has made you part of the team that persecuted and tried to bury the All American Boy, John Glenn.
>
> "These are minor problems you have. May I suggest as an old and dear friend that after the first of the week you go to Canada, Mexico or even to Europe, give your lawyer my name and have him contact me personally. Make arrangements so we can keep you advised."

9. On October 5, 1973, Respondent wrote to Judge Ralph E. Johns, Court of Common Pleas, Division of Domestic Relations, Richland County, in part, as follows:

> "You think this letter is to apologize for rudely beating on your door, I am going to tell you you had it coming and I do not intend to apologize.
>
> "Since I have someone in every office in the courthouse who is more loyal to me than to their employer, it has been reported to me that you have made the following observations: 1. Gilligan is a great guy because he signed your pay raise. 2. Donald Kindt is your friend. 3. You have spoken in friendly terms concerning Donald Hout. 4. You think you took Dave Walker away from Judge Christiansen. I have news for both of you, he is a better friend of mine than either of you.
>
> "I find it necessary to teach you respect for the senior judge, so the above Governor who hates me will be calling on me at my office or he is the dumbest man in America; Kindt thinks Joe Seifert gave him just cause to suspend him while, in fact, I created the situation for that purpose. He further thinks Judge Puglisi is a better friend of his than mine because he got the Governor to change his mind about appointing Bob Lett. etc. ***.

"To get even with me Kindt has been telling all these people that I am mentally unbalanced. He has gotten so excited about his lie that now he is boldly calling friends in Shelby, who have witnesses on an extra phone, in their home, telling them of my lunacy. ***

"I am tired of playing with Kindt as he not only slanders me per se but encourages his friends to spread rumors. I am not going to break his friends with civil suits but if you shove me further, I will him.

"Now I am going to teach you a lesson because I am tired of people telling me how to run my life as I just want to be a judge, raise my family and be left alone. I am going to teach your Governor manners; I am going to teach Mr. Kindt manners and I am going to teach Mr. Hout manners.

"Fortunately Walker is my friend or I would include him. When I get through, you are the one who is going to crawl on your belly and apologize to me for fear you will be next. etc."

10. For the January 1975 term, Respondent presided over the Grand Jury. At that time, in Richland County, the judge who presided over the Grand Jury was assigned all the cases arising out of action by that Grand Jury. Respondent appointed Louise Bush as forelady of the Grand Jury. After her appointment, in February 1975, Respondent called her into his chambers and instructed her that without the knowledge of the County Prosecutor and anyone else except the necessary personnel in the Clerk's and Sheriff's offices, she was to initiate an investigation of the Richland County Democratic Party and particularly an investigation of its finances. Respondent gave the forelady a list of persons to be served with subpoenas. On or about February 28, 1975, Respondent also conferred with the Sheriff of Richland County and his deputy, relative to

their serving the subpoenas and relative to their obtaining a search warrant to secure the contents of a safe deposit box allegedly owned by the Democratic Party. These instructions included among other things, a list of municipal court judges from whom the Sheriff should solicit the search warrant. Respondent impressed the burden of secrecy on all persons involved. Respondent also instructed the forelady to deposit all property secured by the search warrant in a special location in the Respondent's chambers.

11. In August 1975, Respondent heard an habeas corpus action with respect to one Lynn Seaman, an inmate in the Ohio State Reformatory who had been convicted and sentenced for possession of marijuana. Respondent granted the writ, with conditions, on August 12, 1975. A motion for reconsideration was filed. In his Opinion and Journal Entry overruling the motion for reconsideration, Respondent made a personal attack on the Prosecuting Attorney, William F. McKee, and the manner in which he conducted his public office. Thereafter, Prosecutor McKee filed a Petition for Writ of Prohibition in the Court of Appeals for Richland County seeking to prohibt Respondent from carrying into effect his order granting the writ of habeas corpus. Respondent filed a Motion to Dismiss in the Court of Appeals and a Petition and Brief in Prohibition in the Supreme Court of Ohio. In each of these pleadings, motions and briefs in the prohibition actions, the Respondent made vicious personal attacks on Prosecuting Attorney McKee; and in Respondent's Motion and Brief to Dismiss in the Court of Appeals, Respondent again details at great length the alleged political conspiracies to oust him from office, and made vicious personal attacks against the alleged co-conspirators Donald Hout, Vice Chairman

of the Democratic Party; Prosecuting Attorney William F. McKee; Judge Richard M. Christiansen and his wife; and Donald Kindt.

12. In December 1975, and the first quarter of 1976, Prosecuting Attorney William F. McKee filed some forty-five (45) affidavits of prejudice against the Respondent. All have been granted by the Chief Justice of the Supreme Court. In the briefs and letters filed by the Respondent with the Supreme Court pertaining to those affidavits, the Respondent again made vicious personal attacks against Prosecutor McKee.

13. The Mansfield News Journal has published articles pertaining to the public allegations by the Respondent against Judge Richard M. Christiansen, Donald J. Kindt, Donald Hout, Jack Davis, and Prosecuting Attorney William F. McKee. The public is therefore informed of the political conspiracies alleged by the Respondent, of the Respondent's charges involving the Democratic Party officers, of Respondent's ill health, of Respondent's charges against Prosecutor McKee and of Respondent's disqualification by the Supreme Court to hear all assigned criminal cases.

14. Relator says that Respondent is suffering either permanently or for an indefinite time from physical and mental disabilities which substantially impair his capacity to use self-control, judgment and discretion in the conduct of his affairs and social relations; and which will prevent, and does now prevent, Respondent from the proper discharge of the duties of his office.

15. Relator says that the Respondent has violated Canon 1, Canan 2 A, and Canon 7 A(4) of the Code of Judicial Conduct, and Canons 4, 28 and 34 of the Canons of Judicial Ethics, and Respondent has engaged in conduct (1) prejudicial to the administration of justice in that he has created a situation in Richland County which precludes him from trying criminal cases; and (2) Respondent has engaged in conduct which brings the judicial office into disrepute in that he has publicly and privately attacked the character, motives and activities of judges, court personnel, the County Prosecutor and officers and officials of the Democratic Party of Richland County.

NOW, THEREFORE, Relator says that Respondent should be retired, removed or suspended from office as provided in Gov. R. VI, and Section 2701.12, Revised Code of Ohio.

/s/ JOHN R. WELCH
33 West 11th Avenue
Columbus, Ohio 43201

/s/ ALBERT L. BELL
33 West 11th Avenue
Columbus, Ohio 43201
Counsel for Relator

/s/ HARLAN S. HERTZ
1020 Leader Building
Cleveland, Ohio 44114

/s/ EUGENE BALK
First Federal Building
Southwyck Blvd.
Toledo, Ohio 43614

Counsel for Relator

CERTIFICATE

The undersigned, Thomas E. Palmer, Chairman, of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association hereby certifies that Harlan S. Hertz, Eugene Balk, John R. Welch and Albert L. Bell, are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated August 17, 1976

/s/ THOMAS E. PALMER
Chairman

STATE OF OHIO)
) SS:
CUYAHOGA COUNTY)

I, Harlan Stone Hertz, being first duly sworn, depose and state as follows:

1. I am an Attorney at Law admitted to practice before the Supreme Court of Ohio.

2. I am a member of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association.

3. In pursuit of my responsibilities as a member of said Committee I, among others, have made an investigation of complaints referred to said Committee concerning the conduct of Judge James J. Mayer.

4. I participated in the preparation of the foregoing Complaint; and based upon such investigation and based upon my review of documentation available to me I believe the allegations set forth in the foregoing Complaint to be true.

/s/ HARLAN STONE HERTZ

Sworn to before me at Cleveland, Ohio this 30th day of July, 1976.

Notary Public
/s/ LAWRENCE J. FRIEDMAN
Attorney At Law

Notary Public —
State of Ohio

My commission has no
expiration date.
Section 147.03 R.C.